IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/03/2003

CORAM

THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HON'BLE MR.JUSTICE A.K. RAJAN

CRIMINAL APPEAL NO.614 OF 1999
AND CRIMINAL APPEAL NOS. 727 AND 936 OF 1999

Ramesh
.... Appellant in
C.A.No.614/1999
State by
Public Prosecutor
High Court, Chennai
.... Appellant in
C.A.No.727 of 1999

Nagendran
.... Appellant in
C.A.No.936 of 1999

-Vs-

State represented by
Inspector of Plice
P.3 Vyasarpadi Police Station
Chennai
... Respondent in
C.A.Nos.614/1999 and 936/1999

1. Nagendran
2. Ramesh
... Respondents in
C.A.No.727 of 1999

Appeals filed under Section 374 (2) Cr.P.C against judgment dated 14 .7.99 in S.C.No.316 of 1998 on the file of V Additional Sessions Judge, Chennai.

!For petitioner in : Mr.B.Mohan for
C.A.No.614/99 Mr.K.P. Ananthakrishnan

^For respondent in : Mr.E. Raja
C.A.No.614/1999 Addl. Public Prosecutor

For petitioner in Mr.E. Raja
C.A.No.727/1999 : Addl. Public Prosecutor

For 1st respondent in Mr.C.M. Gunasekaran
C.A.No.727/1999 :

For2nd respondent in Mr.K.P. Ananthakrishnan
C.A.No.727/1999 :

For respondent in : Mr.E. Raja
C.A.No.614& 936/1999 Addl. Public Prosecutor

For petitioner in
C.A.No.936/1999 : Mr.C.M. Gunasekaran

For respondent in Mr.E. Raja
C.A.No.936/1999 : Addl. Public Prosecutor

:COMMON JUDGMENT

(The Judgment of the Court was delivered by
M. KARPAGAVINAYAGAM,J)

Nagendran and Ramesh are accused Nos. 1 and 2 respectively in Sessions Case No.316/1998 on the file of the V Additional Sessions Court, Chennai and they have been convicted for the offences punishable under Sections 341 and 302 read with 34 I.P.C. and each were sentenced to undergo rigorous imprisonment for 10 years for the offence under Section 302 read with 34 I.P.C. and simple imprisonment for one month each for the offence under Section 341 I.P.C. The other accused A.3 and A.4 were acquitted.

2) The facts leading to conviction, are as follows:-
a) P.W.1 Prema and P.W.3 Sheela are the daughters of Stanley Shanmugam, the deceased in this case. The deceased Stanley Shanmugam was residing at No.55, Ist Street, C-Kalyanapuram, Vyasarpadi. The accused 1 to 4 are the residents of the same area. The said Stanley Shanmugam was running a brandy shop, under the name and style of "Balaji Wines". A1 Nagendran demanded rowdy mamool from one Venkatesan, the Manager of the said wine shop. When he refused to give money to the 1 st accused, he attacked the said Venkatesan with knife and caused injuries.
b) With reference to this incident, a case was registered against the 1st accused. During the course of trial in that case, the deceased gave evidence before the Court against the 1st accused. Due to this, the 1st accused developed a grudge against the deceased. From then onwards, he used to threaten the deceased stating that he would do away with him one day or the

other.

c) On the date of occurrence, i.e, on 8.11.97 at 7.30 a.m, the deceased Stanley Shanmugam was sitting in a chair in front of his house. P.W.1 Prema, the daughter and P.W.4 Ramu were standing near the deceased. At about 7.45 a.m, the 1st accused Nagendran and 2nd accused Ramesh and two other accused came to the house of the deceased with patta knife. As soon as A1 entered the scene of occurrence, he gave a cut on the head of the deceased. The 2nd accused also with patta knife, attacked the deceased and two others with patta knives inflicted injuries on the neck of the deceased. The deceased, after sustaining injuries, fell down. P.W.4 Ramu shouted. Thereafter, the 1st accused Nagendran gave a cut on the right shoulder of P.W.4 Ramu and all the other witnesses viz., P.Ws.1,3 and 6 raised a hue and cry. The accused fled away from the scene of occurrence with weapons.
d) P.W.4 Ramu, P.W.6 Munusamy, the husband of P.W.1 and P.W.9 Illangovan, the son of the deceased, took the victim to the Government Stanley Hospital. P.W.14 Dr. Alagappan declared him dead and issued Ex. P.16 accident register copy. He sent Ex.P.17 death intimation to the police. In the mean time, P.W.1 Prema went to police Station at about 8.00 a.m and gave a complaint to P.W.17 Gowthaman, Sub Inspector of Police, who registered a case in Cr.No.1599/97 under Sections 341,3 24,307 and 506(ii) I.P.C. Ex.P.21 is complaint and Ex.P.22 is the printed first information report.

e) P.W.14 Dr.Alagappan, examined P.W.4 and found injuries on the upper arm and scapular region. He issued Ex.P.18 the accident register.

f) P.W.18 Mariappan, Inspector of police, after receipt of message, instructed P.W.17 Sub Inspector of Police to proceed to the scene of occurrence. He rushed to the Government Hospital. He received death intimation. Therefore, he altered the case to one under Sec. 302 I. P.C. He sent Ex.P.30 express report Then, he proceeded to scene of occurrence, prepared Ex.P.2 observation mahazar and drew Ex.P.23 rough sketch. He recovered M.O.5 blood stained chair, M.O.6 blood stained sombu, M.O.7 blood stained daily news paper, M.O.8 cooling glass, M.O.9 blood stained sombu cover,M.O.13 blood stained cement plaster, and M.O.14 sample cement plaster under Ex.P.3. He examined the witnesses and recorded their statements. He proceeded to Government Stanley Hospital. He conducted inquest over the body of the deceased Stanley Shanmugam between 11.30 a.m and 1.30 p.m in the presence of panchayadtdars. He prepared Ex.P.24 inquest report. He examined the other witnesses. He sent the dead body for post-mortem.

g) P.W.15 Dr.Taherabegum, conducted post-mortem and found as many as four injuries on the body. Ex.P.20 is the post-mortem certificate. He noticed the following injuries:

1. Superficial incised wound 7 x + cms on the back of left hand.
2. Abrasion on the left arm 4 x , cms, 41/2 x + cms
3. Incised wound 20 x 4 cms, x bone deep on the left side of neck extending across the front of neck upto sternal notch.
On dissection The underlying muscles found cut 15 x 3 cms. External jugular vein completely cut. Body of 3rd cervical vertebra cut 2 x + cms. Extensive

extravasation of blood in the soft tissues.
Multiple incised wounds (6-8) on both the frontal region across the nose and just below the left eyeball. Right half of scalp and across the vault of scalp overlapping over one another. Brain matter found coming out, fractured bones exposed.
ON DISSECTION: Of scalp comminuted fracture of the both frontal bones, right temporal bone, nasal bone, left orbit, left maxilla brain covered with subarachnoid and sub-dural haemorrhage. Multiple cuts in both the frontal lobes and right temporal lobs.

The doctor gave an -opinion that the deceased died of shock and haemorrhage due to multiple injuries.

h) On 11.11.97, the accused 1,3 and 4 surrendered before the learned Judicial Magistrate, Thiruvallur. P.W.18 Inspector of Police obtained police custody of the accused. On 19.11.97, P.W.18 took the accused 1,3 and 4 under police custody and on their confession, M.O.1 blood stained patta knife used by the 1st accused and M.O.2 blood stained patta knife used by the 2nd accused were recovered under Ex.P.28 mahazar from the 1st accused. On the confession of 3rd accused, M.O.3 blood stained patta knife used by him was recovered under Ex.P.28 Mahazar. On the confession of the 4th accused, M.O.4 blood stained patta knife was recovered under mahazar Ex.P.28.

i) P.W.19 Inspector of police the Successor took up the case for further investigation. He arranged to conduct identification parade on the basis of the requisition given by P.W.18 earlier. On 27.11.97, the 2nd accused Ramesh surrendered before the V Metropolitan Magistrate. On 9.12.97, P.W.19 took the 2nd accused for police custody. P.W.19 examined and produced the 2nd accused before the Court. On 22.4 .98, he completed the investigation and filed final report against the accused for the offences under Sections 341, 302, 324 read with 34 and 307 I.P.C.

3) During the course of trial, P.Ws 1 to 19 were examined Exs.P.1 to P.30 were filed and M.Os.1 to 19 were marked.

4) After completion of trial, when the accused were questioned under Sec.313 Cr.P.C they simply denied their complicity in the commission of offence. The trial Court on a consideration of the evidence available on record, though acquitted 3rd and 4th accused, convicted the 1st and 2nd accused for the offences punishable under Sections.302 read with 34 and 341 I.P.C.

5) While convicting the accused 1 and 2, the trial Court imposed a sentence of, merely 10 years each for the offence punishable under Section 302 read with 34 I.P.C, even though the minimum sentence is life

imprisonment. Hence the State has chosen to prefer an appeal for enhancement of sentence in C.A.No.727/99. challenging the conviction and sentence A.1 filed C.A.No.936/99 and A.2 filed C.A.No.614/99 .

6) Learned counsel Mr. C.M. Gunasekaran, appearing for A.1

in C.A. No.936/99 as well as the learned counsel Mr. K.P. Ananthakrishnan, appearing for A2 in C.A.No.614/99 took us through the entire evidence and contended that the conviction imposed upon the appellants is not valid as there are several infirmities, which will go to the root of the matter and that therefore, the appeals filed by accused 1 and 2 are liable to be allowed.

7) According to Mr. C.M. Gunasekaran, learned counsel for the 1st accused, while all the eye witnesses turned hostile, P.W.3, Sheela the daughter of the deceased alone has given ocular evidence regarding the occurrence and so, her evidence cannot be believed, since she is an interested witness especially when her name has not been mentioned in the complaint given by P.W.1 and also due to the reason that P.W.3 was not examined during the course of inquest. As a matter of fact, all the other witnesses examined in this case did not refer to the presence of P.W.3 at the place of occurrence. Admittedly, in the identification parade, P.W.3 did not identify the accused. There is also confusion with reference to the place of occurrence, as in one set of documents it is mentioned that occurrence took place at Door No.58 and in the other set of documents, it is mentioned that the occurrence took place at Door No.55.

8) It is contended by learned counsel Mr.K.P. Ananthakrishnan, appearing for the 2nd accused that though there is no delay in lodging the complaint, as the complaint has been given to P.W.17 Inspector of Police within 15 minutes, the graphic details given in Ex.P.21 would indicate that the complaint would not have been registered at the relevant time as mentioned in the said document. Admittedly, there is no recovery of weapons from the 2nd accused. P.W.3 would state that she went along with P.W.9 the brother to the hospital in an auto and on the other hand, P.W.9 did not support the same. Even according to P.W.9, P.W.3 came to the scene later. Therefore, P.W.3 would not have seen the occurrence. The evidence of P.W.6 would not be useful to the prosecution, since admittedly, none of the witnesses told P.W.6 as to the details of the assailants. Even P.W.3, while implicating A.2 did not choose to give the particulars of the overt act, whereas she has given the details as against the other accused.

9) On these aspects, we have heard Mr.E. Raja, learned Additional Public Prosecutor.

10) We have given our anxious consideration to the rival contentions urged by learned counsel on either side and also gone through the records.

11) It is so unfortunate to notice that in a day light at about 7.4 5 a.m, the accused persons came to the house of the deceased and attacked with patta knives and inflicted very serious injuries on the vital parts of the deceased. According to the prosecution, the motive is that the deceased Stanley Shanmugam gave evidence against the 1st accused in a criminal case in which A.1 was accused, of having attacked one Vernkatesan over the refusal to pay rowdy mamool to him.

12) Regarding this motive, we have got the evidence of P.W.3,

the daughter and P.W.9, the son of the deceased. Apart from that, it has been elicited from P.W.18 that the 1st accused was the accused in the said case and in that case, the deceased gave evidence against him. This was not challenged. So, there is no difficulty in holding that there was motive for the accused to attack the deceased.

13) It is not in dispute that the 1st and 2nd accused are close associates. It may be true that the 3rd and 4th accused were acquitted by the trial Court on the reason that the identity of the 3rd and 4 th accused was not established by the prosecution. That ground would not apply to the case of the 1st and 2nd accused.

14) It is the specific case of P.W.3 that she knew the accused 1 and 2 already and as such, there cannot be any dispute with regard to the identity of the 1st and 2nd accused. Though it has not been specifically stated by P.W.18 that as to who are all the accused who were taken for identification parade, a reading of the evidence of P.W.3 as a whole would indicate that though she had participated in the identification parade, she did not identify the 3rd and the 4th accused. As noted above, P.W.3 would specifically state that the 1st and 2nd accused were known to her earlier and as such the question of identity of A.1 and A.2 would not arise.

15) The only point which is to be considered now in this case is as to whether P.W.3 was present at the time of occurrence and witnessed the said occurrence.

16) It is strenuously contended by learned counsel for both the appellants that though P.Ws.6 and 9 would make a reference about the presence of P.W.3, they did not state that P.W.3 had also seen the occurrence. This contention, in our view, does not deserve acceptance for the reason that a conjoint reading of the evidence of P.Ws.6 ,9 and 3, would clearly indicate that P.W.3 was present in the place of occurrence at the relevant time and she witnessed the occurrence. As a matter of fact P.W.6 Munuswami, the son-in-law of the deceased, had specifically stated in his evidence that when he heard the sound of shouting ("Inah Inah) from the house of the deceased, he came running towards the house and saw the deceased with cut injuries sitting on M.O.5 Chair and P.W.4 Ramu, P.W.3 Sheela and P.W.1 Prema were crying aloud. As correctly pointed out by the learned counsel for the appellants, all the other witnesses, that too, relative eye witnesses, turned hostile and the only eye witness available in this case, as indicated above, is P.W.3, the daughter of the deceased. P.W.6 is the son-in-law of the deceased. P.W.9 is none other than the son of the deceased. Even though they are the close relatives of the deceased, they gave only the details of the portion of the occurrence. In the light of the materials given in the evidence of P.Ws.6 and 9 with reference to presence of P.W.3 at the place of occurrence, the evidence of P.W.3 has to be weighed. Of course, P.W.3's name has not been mentioned in Ex.P.21,the First Information Report. It is also admitted by prosecution that

P.W.3 was not examined during inquest. But the fact remains that she was examined on 8.11.97 and her statement reached the Court on 11.11.97 itself.

17) Yet another thing to be noticed is the evidence of P.W.1. Though she is the daughter of the deceased, and the author of the first information report, unfortunately, she turned hostile. Under these circumstances, her oral evidence as well as documentary evidence, would be of no use to the prosecution. But, however, one portion of her evidence gives a clear picture about the case.

18) A suggestion was put to P.W.17 Sub Inspector of Police that he obtained signature in blank white paper and thereafter in consultation with others, the complaint was prepared. Fortunately, for prosecution, P.W.1, has specifically stated that she signed in the paper which has been already written and handed over to the police. She also admits her signature found in Exs.P.1 and P.21. Therefore, it cannot be contended that they are fabricated documents created by police in order to implicate the accused.

19) As a matter of fact, the evidence of P.W.3 is so inspiring, especially when her evidence has been corroborated by P.Ws.6 and 9. Further more, the evidence of P.W.6, who stated that he saw P.W.3 Sheela at the place of occurrence and she raised hue and cry, has not been challenged by the accused in the cross examination. Further, this aspect of the evidence has been corroborated by P.W.9 who stated that P.W.3 also was present inside the house when the occurrence took place.

20) It is strenuously contended that since P.W.9 had stated that P.W.3 came out of the house along with him, she would not have seen the occurrence. A reading of the evidence of P.W.9, in our view, would not give such a meaning. The evidence of P.Ws.6 and 9 would show that P.W.3 was present inside the house. The deposition given by P. W.3, who gives complete details about the manner of the occurrence, would indicate that she witnessed the occurrence. As pointed out by the learned counsel for the 2nd accused, it may be true that P.W.3 did not give the particulars of the parts of the body in which injuries were inflicted by A.2, but a reading of the evidence of P.W.3, as a whole, would indicate that both A.1 and A.2 attacked and caused injuries on the head. This is also corroborated by the fact that in Ex.P.20 post-mortem certificate, the injury No.4 found on head, contains 6 to 8 injuries. Therefore, the evidence of P.W.3, in our view, not only would corroborate the evidence of P.Ws.6 and 9 as indicated earlier but also the evidence of P.W.15 the post-mortem doctor. Besides this, the prosecution placed another material through recovery of M.Os.1 and 2 from the 1st and 2nd accused. M.Os.1 and 2 which contain human "A" group blood which is the blood group of the deceased.

21. It is contended that there is no consistency with reference to the place of occurrence. On going through the entire records, it is clear that the occurrence had taken place only at No.55 ,CKalayanapuram and not at 58, C-Kalyanapuram. No witness would state that occurrence had taken place at No. 58. It is clear from the material that No. 55 and 58 are situate in the same street. Ex.P.21 complaint, Ex.P.2 Observation mahazar and

the evidence of P.Ws.1 and 2, would make it clear that occurrence had taken place only at No. 55 and not at No.58, as mentioned in Ex.P.17 death intimation and P.18 accident register. The reference about Door No.58 mentioned in Exs.P.17 and P.1 8 may not be of any use to the defence when there is substantive evidence through P.W.3 that occurrence took place only at No. 55.

22) For the reasons stated above, none of the grounds urged by the learned counsel for the appellants, in our view, would merit consideration and as such, it has to be held that the appeals filed by the accused 1 and 2 have no merits and the same are liable to be dismissed. Accordingly, C.A.Nos.614 and 936/1999 are dismissed confirming the conviction imposed on the accused.

23) It is noticed that the trial Court imposed the sentence of ten years rigorous imprisonment on each of the accused for the offence punishable under Sec.302 read with 34 I.P.C..

24) It is unfortunate on the part of the trial Court, to give the sentence of 10 years rigorous imprisonment each, for the offence under Section 302 read with 34 when the Section provides for the minimum sentence of life on each of the accused. It means, without looking into the provision of law, the trial Court has hastened to pass the sentence of 10 years, which, in our view is patently illegal. Hence we express our displeasure over the grave mistake committed by the trial Court. The sentence of 10 years rigorous imprisonment on each of the accused for the offence punishable under Section 302 read with 34 I.P.C, imposed is liable to be enhanced and accordingly both the accused are sentenced to undergo for life imprisonment. Thus, the appeal filed by the State viz., C.A. 727/1999 is allowed.

25) In fine, C.A.No.727/1999 is allowed and C.A.Nos.614 and 936/99 are dismissed.
The Registry is directed to keep a copy of this Judgment in the confidential file of the concerned trial Court Judge.

Index:yes
Website :yes

sr

To

1. The V Addl.Sessions Judge, Chennai
2. The V Addl.Sessions Judge, Chennai through The Principal Sessions Judge, Chennai
3. The Superintendent,Central Prison, Vellore
4. The Superintendent, Central Prison, Chennai
5. The Public Prosecutor, High Court, Madras
6. The Asst. Commissioner of Police, Law and Order, Pulianthope Range, Chennai
7. The Inspector of Police,

P-3 Vyasarpadi Police Station, Chennai
8. The Station House Officer, Kottur Police Station
9. The District Collector, Chennai
10. The Director General of Police, Chennai